

**Senate Bill No. 1336**

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Passed the Senate      August 17, 2004

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*Secretary of the Senate*

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Passed the Assembly      August 12, 2004

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2004, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to add Section 1638.1 to the Business and Professions Code, relating to oral and maxillofacial surgery, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1336, Burton. Oral and maxillofacial surgery.

Existing law, the Dental Practice Act, provides for the licensure and regulation of the practice of dentistry by the Dental Board of California. Existing law requires all funds received under the act to be placed in the State Dentistry Fund, which is continuously appropriated.

This bill would require a person who is licensed to practice dentistry who is not a physician and surgeon to apply for and receive a permit to perform elective facial cosmetic surgery prior to performing elective facial cosmetic surgery. The bill would also require an applicant for a permit to furnish specified information and to pay an application fee of \$500, and a renewal fee of \$200. The bill would prohibit a licensee from performing such a surgery procedure, except at specified health facilities.

The bill would authorize the board to adopt regulations related to the permits, and would require the board to appoint a credentialing committee to review applicant qualifications and recommend whether or not to issue a permit to the applicant.

Because this bill would increase the amount of fees deposited in the State Dentistry Fund, a continuously appropriated fund, it would make an appropriation.

Because a willful violation of this bill's provisions would be a misdemeanor, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.



*The people of the State of California do enact as follows:*

SECTION 1. Section 1638.1 is added to the Business and Professions Code, to read:

1638.1. (a) (1) A person licensed pursuant to Section 1634 who wishes to perform elective facial cosmetic surgery shall first apply for and receive a permit to perform elective facial cosmetic surgery from the board. The initial permit issued to a person who otherwise meets the requirements of this section shall be provisional.

(2) A provisional permit shall be valid for up to two years. During the two-year period, the provisional permitholder must satisfy the requirements of subdivision (g), and shall not perform facial cosmetic surgical procedures except at a licensed general acute care hospital or a licensed outpatient surgical facility as long as the permit is provisional.

(3) A nonprovisional permit issued pursuant to this section shall be valid for a period of two years and must be renewed by the permitholder at the time his or her license is renewed. Every six years, prior to renewal of the permitholder's license and permit, the permitholder shall submit evidence acceptable to the credentialing committee that he or she has maintained continued competence to perform the procedures authorized by the permit. The credentialing committee may limit a permit consistent with paragraph (1) of subdivision (c) if it is not satisfied that the permitholder has established continued competence.

(b) The board may adopt regulations for the issuance of the permit that it deems necessary to protect the health, safety, and welfare of the public.

(c) A licensee may obtain a permit to perform elective facial cosmetic surgery by furnishing all of the following information on an application form approved by the board:

(1) Proof of successful completion of an oral and maxillofacial surgery residency program accredited by the Commission on Dental Accreditation of the American Dental Association.

(2) Proof that the applicant has satisfied the criteria specified in either subparagraph (A) or (B):

(A) (i) Is certified, or is a candidate for certification, by the American Board of Oral and Maxillofacial Surgery.



(ii) Submits to the board a letter from the program director of the accredited residency program, or from the director of a postresidency fellowship program accredited by the Commission on Dental Accreditation of the American Dental Association, stating that the licensee has the education, training, and competence necessary to perform the surgical procedures that the licensee has notified the board he or she intends to perform.

(iii) Submits documentation to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform from both of the following categories:

(I) Cosmetic contouring of the osteocartilaginous facial structure, which may include, but is not limited to, rhinoplasty and otoplasty.

(II) Cosmetic soft tissue contouring or rejuvenation, which may include, but is not limited to, facelift, blepharoplasty, facial skin resurfacing, or lip augmentation.

(iv) Submits documentation to the board showing the surgical privileges the applicant possesses at any licensed general acute care hospital and any licensed outpatient surgical facility in this state.

(B) (i) Has been granted privileges by the medical staff at a licensed general acute care hospital to perform the surgical procedures set forth in paragraph (A) at that hospital.

(ii) Submits to the board the documentation described in clause (iii) of subparagraph (A).

(3) Proof that the applicant is on active status on the staff of a general acute care hospital and maintains the necessary privileges based on the bylaws of the hospital to maintain that status.

(d) The application shall be accompanied by an application fee of five hundred dollars (\$500) for an initial permit. The fee to renew a permit shall be two hundred dollars (\$200).

(e) (1) The board shall appoint a credentialing committee to review the qualifications of each applicant for a permit. Upon completion of the review of an applicant, the committee shall make a recommendation to the board on whether to issue or not issue a permit to the applicant. The permit may be unqualified, entitling the permitholder to perform any facial cosmetic surgical procedure authorized by this section, or it may contain limitations where the credentialing committee is not satisfied that the



applicant has the training or competence to perform certain types or classes of procedures, or where the applicant has not requested or provided adequate documentation for all procedures authorized by this section.

(2) The credentialing committee shall be comprised of five members, as follows:

(A) A physician and surgeon with a specialty in plastic and reconstructive surgery who maintains active status on the staff of a licensed general acute care hospital in this state.

(B) A physician and surgeon with a specialty in otolaryngology who maintains active status on the staff of a licensed general acute care hospital in this state.

(C) Three oral and maxillofacial surgeons licensed by the board who are board certified by the American Board of Oral and Maxillofacial Surgeons, and who maintain active status on the staff of a licensed general acute care hospital in this state, at least one of whom shall be licensed as a physician and surgeon in this state. Two years after the effective date of this section, any oral and maxillofacial surgeon appointed to the committee who is not licensed as a physician and surgeon shall hold a permit pursuant to this section.

(3) The board shall solicit from the following organizations input and recommendations regarding members to be appointed to the credentialing committee:

(A) The Medical Board of California.

(B) The California Dental Association.

(C) The California Association of Oral and Maxillofacial Surgeons.

(D) The California Medical Association.

(E) The California Society of Plastic Surgeons.

(F) Any other source that the board deems appropriate.

(4) In making the appointments to the credentialing committee described in subparagraphs (A) and (B) of paragraph (2), the board shall make its appointment from a list of qualified candidates submitted to the board by the California Medical Association, which shall consult with the Medical Board of California, the California Society of Plastic Surgeons, and the California Otolaryngology-Head and Neck Surgery Society. The list shall contain at least two qualified candidates for each position on the committee. Nothing in this paragraph shall be interpreted to



prevent a quorum of the credentialing committee from meeting by virtue of a delay in submitting a list to the board.

(5) The credentialing committee shall meet at a time and place directed by the board to evaluate applicants for permits. A quorum of three members shall be required for the committee to consider applicants and make recommendations to the board.

(f) A licensee may not perform any elective, facial cosmetic surgical procedure except at a general acute care hospital, a licensed outpatient surgical facility, or a surgery center or office surgical facility accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), by the American Association for Ambulatory Health Care (AAAHC), by the Medicare program, or by an accreditation agency approved by the Medical Board of California pursuant to subdivision (g) of Section 1248.1 of the Health and Safety Code.

(g) (1) The holder of a provisional permit shall perform five proctored procedures in each of the two classes of procedures described in paragraph (2) of subdivision (c) at either a general acute care hospital or a licensed outpatient surgical facility. An applicant who is seeking a permit to perform only procedures in one of the classes shall only be required to perform five proctored procedures in that class. The reports of the proctor for these procedures shall be submitted to the credentialing committee within seven days of their completion. When the credentialing committee has received and reviewed the 10 reports, it shall decide whether to recommend to the board that the permit be made nonprovisional.

(2) For purposes of this subdivision, any person licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2, or Chapter 5 (commencing with Section 2000) of Division 2 who has surgical privileges at a general acute care hospital or licensed outpatient surgical facility, or holds a permit issued pursuant to this section for the surgical procedure to be proctored, is eligible to act as a proctor.

(3) A licensed general acute care hospital, licensed outpatient surgical facility, and the medical staff of these facilities shall not discriminate based on the degree or degrees held by the surgeon, or the specialty of the surgeon, with respect to proctoring or use of facilities for proctoring pursuant to this section. Any violation of this paragraph may be enjoined in an action brought by the



aggrieved surgeon in the superior court of the county where the violation occurs.

(h) For purposes of this section, the following terms have the following meanings:

(1) “Elective cosmetic surgery” means any procedure defined as cosmetic surgery in subdivision (d) of Section 1367.63 of the Health and Safety Code, and excludes any procedure that constitutes reconstructive surgery, as defined in subdivision (c) of Section 1367.63 of the Health and Safety Code.

(2) “Facial” means those regions of the human body described in Section 1625 and in any regulations adopted pursuant to that section by the board.

(i) A holder of a permit issued pursuant to this section shall not perform elective facial cosmetic surgical procedures unless he or she has malpractice insurance or other financial security protection that would satisfy the requirements of Section 2216.2 and any regulations adopted thereunder.

(j) A holder of a permit shall comply with the requirements of subparagraph (D) of paragraph (2) of subdivision (a) of Section 1248.15 of the Health and Safety Code, and the reporting requirements specified in Section 2240, with respect to any surgical procedure authorized by this section, in the same manner as a physician and surgeon.

(k) Any violation of this section constitutes unprofessional conduct and is grounds for the revocation or suspension of the person’s permit, license, or both, or the person may be reprimanded or placed on probation. Proceedings initiated by the board under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved \_\_\_\_\_, 2004

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*Governor*

